

INTERSTATE TRANSFER OF PRISONERS ACT, 2017

No. 12



of 2017

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An Act to make provision for the transfer of prisoners between Botswana and countries with which Botswana has entered into agreements for the transfer of prisoners; and for matters connected with or incidental to the foregoing.

Date of Assent: 28.08.2017

Date of Commencement: On Notice

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Interstate Transfer of Prisoners Act, 2017, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Short title and
commencement

2. In this Act, unless the context otherwise requires —

Interpretation

“appropriate authority” means an officer responsible under an enactment of a transfer country for administering the transfer of prisoners to and from that transfer country, and includes any officer delegated in that capacity;

“Commissioner” means a person appointed as Commissioner of Prisons and Rehabilitation under the Prisons Act;

Cap. 21:03

Cap. 63:01	“health officer” means a medical practitioner registered in terms of the Botswana Health Professions Act, and includes a health inspector and a public health nurse; “prisoner” means a person serving a sentence of imprisonment or confined under an order made by a court in exercise of its criminal jurisdiction; and “transfer country” means any country with which Botswana enters into an agreement for the transfer of prisoners.
Agreements to facilitate transfer	3. (1) The Minister may enter into an agreement with any country for the purposes of facilitating the transfer of a prisoner who is in — (a) Botswana and is a citizen or a national of a transfer country; or (b) a transfer country and is a citizen of Botswana. (2) An application for transfer under this Act may be made in Botswana on behalf of a national or citizen of a transfer country where there is provision for a similar application to be made on behalf of a citizen or national of Botswana in that transfer country to which the prisoner wishes to be transferred.
Eligibility for transfer from Botswana	4. (1) A prisoner may be eligible for transfer from Botswana to a transfer country under this Act if — (a) the prisoner is a national or citizen of the transfer country; (b) the prisoner has community ties with the transfer country; (c) the prisoner applies to be transferred on medical grounds; or (d) there is a reciprocal provision in the law of the transfer country of which he or she is a national or citizen to permit a national or citizen of Botswana serving a term of imprisonment in that country to be transferred to Botswana. (2) A prisoner may be transferred between Botswana and a transfer country under this Act if Botswana and the transfer country have agreed to the transfer of the prisoner under this Act.
Eligibility for transfer to Botswana	5. A prisoner may be eligible for transfer to Botswana from a transfer country under this Act if the prisoner — (a) is a national or citizen of Botswana; or (b) is permitted to travel to, enter and remain in Botswana indefinitely under the Immigration Act.
Cap. 25:02	
Persons sentenced to death not eligible for transfer	6. Notwithstanding any provision in this Act, a person convicted and sentenced to death shall not be eligible for transfer.
Conditions of transfer	7. (1) The conditions for transfer of a prisoner from Botswana shall be satisfied if — (a) neither the sentence of imprisonment imposed by Botswana courts nor the conviction on which it is based is subject to appeal;

- (b) the acts or omissions constituting the offence on account of which the prisoner is serving the sentence in Botswana would, if the acts or omissions had occurred in a transfer country, have constituted an offence in the transfer country; and
- (c) in the case of a mentally challenged person, the findings of Botswana courts, of unfitness to stand trial is not subject to an appeal.

(2) The conditions for transfer of a prisoner to Botswana shall be satisfied if —

- (a) neither the sentence of imprisonment imposed by the courts of the transfer country nor the conviction on which it is based is subject to appeal;
- (b) the acts or omissions constituting the offence on account of which the prisoner is serving the sentence in the transfer country would, if the acts or omissions had occurred in Botswana, have constituted an offence in Botswana; and
- (c) in the case of a mentally challenged person, the findings of the courts of the transfer country, of unfitness to stand trial is not subject to an appeal.

8. (1) Subject to other provisions of this Act, an application under this Act may be made to the appropriate authority by —

Application
for transfer

- (a) a prisoner;
- (b) a relative of a prisoner; or
- (c) any interested person or institution.

(2) An application for transfer of a prisoner from Botswana shall be in such form as may be prescribed and accompanied by —

- (a) a certified copy of the judgment relating to the conviction of the prisoner; and
- (b) such other documents as may be prescribed.

(3) A certified copy of the judgment referred to in subsection (2) (a) shall be accepted as conclusive proof of the facts stated therein.

(4) An application for transfer under section 4 (1) (c) shall be supported by a medical certificate issued by a health officer.

9. Upon receipt of an application for transfer under section 8, the Minister may, after consultation with the Commissioner, indicate in writing to the appropriate authority whether or not the Minister agrees to the transfer.

Grant or
refusal of
application
by the
Minister

10. The Commissioner shall facilitate transfers under this Act and shall notify the Minister and the prisoner —

Facilitation
of transfer

- (a) about the transfer country's decision pertaining to the transfer; and
- (b) if consent is given, of the proposed method by which the sentence of imprisonment will be enforced by the transfer country and any other proposed terms of the transfer.

Issue of
warrant for
transfer from
Botswana

11. (1) Where the Minister agrees to transfer a prisoner from Botswana under section 9, he or she shall issue a warrant in such form as may be prescribed to the appropriate authority —

- (a) authorising the transfer of the prisoner from Botswana to a transfer country; and
- (b) specifying any arrangements for effecting the transfer of the prisoner.

(2) The Minister shall at the time of issuing a warrant under subsection (1) cause a copy of the warrant to be delivered to the Commissioner.

Issue of
warrant for
transfer to
Botswana

12. (1) Where the Minister agrees to a request for the transfer of a prisoner to Botswana he or she shall, issue a warrant in such form as may be prescribed —

- (a) authorising the admission on transfer of the prisoner into Botswana from a transfer country; and
- (b) specifying any arrangements for effecting the transfer of the prisoner.

(2) The Minister shall at the time of issuing a warrant under subsection (1) cause a copy of the warrant to be delivered to the Commissioner.

(3) A person admitted into a prison in Botswana on transfer under this provision shall serve the remainder of a term of imprisonment as given and reckoned in the transfer country.

Appeals

13. (1) A prisoner transferred in terms of this Act shall not be entitled to apply for review or appeal of conviction or sentence for which he or she was serving prior to his or her transfer to Botswana.

(2) Notwithstanding subsection (1), a prisoner may make representation in respect of his or her welfare which may require administrative intervention in terms of any written law.

Regulations

14. (1) The Minister may make Regulations for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations prescribing —

- (a) the forms of any application which may be made in terms of this Act, and the particulars to be furnished in connection with any such application;
- (b) the forms of warrants to be issued under this Act;
- (c) any other matter required or permitted to be prescribed under this Act; or
- (d) the procedure to be followed for enforcement in Botswana of a sentence imposed by the transfer country's courts on a prisoner.

PASSED by the National Assembly this 10th day of August, 2017.

BARBARA N. DITHAPO,
Clerk of the National Assembly.